

# EXHIBIT

48

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

NANCY MIRACLE, ) CIVIL NO. 92-00605ACK  
Plaintiff, )  
vs. )  
ANNA STRASBERG, etc., )  
Defendant. )

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAR 2 4 1993

at    o'clock and    min.    M.  
WALTER A.Y.H. CHINN, CLERK

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on  
Monday, December 14, 1992, at 10:38 a.m., at Honolulu, Hawaii,

BEFORE: HONORABLE ALAN C. KAY  
Chief United States District Judge  
District of Hawaii

REPORTED BY: STEPHEN B. PLATT, CSR, RPR, CM  
Official U.S. District Court Reporter  
District of Hawaii

APPEARANCES: JOHNAARON MURPHY JONES, ESQ.  
Attorney At Law  
1170 N. King Street  
Honolulu, Hawaii 96817

Attorney for the Plaintiff

MILTON M. YASUNAGA, ESQ.  
CATHY CAREY, ESQ.  
Cades Schutte Fleming & Wright  
P.O. Box 939  
Honolulu, Hawaii 96808

Attorneys for the Defendant

SEAI 0048

10:38 A.M.

1 MONDAY, DECEMBER 14, 1992

2 -oo0oo-

3 THE CLERK: Civil 92-605, Nancy Miracle and others  
4 versus Anna Strasberg. This hearing is called on a motion to  
5 dismiss.

6 MR. YASUNAGA: Good morning, Your Honor.

7 Milton Yasunaga for the defendant, Anna Strasberg,  
8 also with Cathy Carey, movants today.

9 THE COURT: Good morning.

10 MR. JONES: Good morning, Your Honor.

11 Johnaaron Murphy Jones on behalf of Nancy Miracle,  
12 also known as Nancy Maniscalco Greene, who is present in the  
13 courtroom.

14 THE COURT: Good morning.

15 MS. MIRACLE: Good morning.

16 THE COURT: The court has read the memorandums of the  
17 parties, and is ready to rule, unless the parties wish to  
18 argue further.

19 MR. YASUNAGA: Your Honor, I think we have covered it  
20 in our memos. We did point out one case that we found later,  
21 "Green versus American Broadcasting," which points out that  
22 even if certain documents convert the motion into a Rule 56,  
23 there should not be any discovery allowed where it's a matter  
24 within the other party's control and knowledge, as is the case  
25 here, with the testimony that Ms. Green knew of the claim

5FAT 0048

1 since January of 1985, and possibly earlier.

2 MR. JONES: If it please the court, we would like to  
3 basically take ten minutes to sum up what we feel are the  
4 germane issues involved in this particular matter.

5 THE COURT: Very well.

6 MR. JONES: First, Your Honor, we would like to  
7 supplement our brief with an exhibit, Plaintiff's Exhibit  
8 Number 15 -- uh, Number F (tendering documents to counsel and  
9 the clerk) -- which is basically a copy of Hawaii Revised  
10 Statute dealing with the issue of jurisdiction under the  
11 long-arm statutes of the State of Hawaii. The long-arm  
12 statutes of the State of Hawaii provide for jurisdiction of  
13 this court in any matter involving the transaction of business  
14 within the state, or the commission of any tortious act within  
15 the State of Hawaii.

16 The plaintiffs have contended all along that the  
17 pretermitted heir statutes -- that under the pretermitted heir  
18 statutes of California, that the defendants have been doing  
19 business in the State of Hawaii. We contended that this  
20 business that they were and are doing presently, that the  
21 millions of dollars that they are making through merchandising  
22 agreements is, in effect, doing business in the State of  
23 Hawaii.

24 Plaintiffs further contend that the statute under  
25 number two, the commission of a tort, or tortious act, within

SFAZ 0049

1 the State of Hawaii, refers to the conduct of the defendants  
2 in defrauding the plaintiff. For the past six years the  
3 plaintiff has been a resident, and domiciled in the City and  
4 County of Honolulu. For the past six years the defendants  
5 have defrauded her, and failed to disclose to her that they  
6 knew, back in 1962, at the death of Marilyn Monroe, that  
7 Marilyn Monroe did, in fact, have a daughter.

8 THE COURT: They knew what in '62?

9 MR. JONES: In 1962, Your Honor, the defendants knew  
10 that -- the defendant was, at that time, Your Honor,  
11 Lee Strasberg. Lee Strasberg, Your Honor, was the tutor, the  
12 acting instructor for Marilyn Monroe, and her daughter, in  
13 New York.

14 While the plaintiff was seven, eight, nine and ten  
15 years old -- that's where she first met Lee Strasberg -- her  
16 mother, Marilyn Monroe, would take the plaintiff and, two or  
17 three times a week, as her affidavit states, they would go to  
18 acting classes taught by Lee Strasberg. Lee Strasberg was a  
19 trusted member of the family. They would go out to the  
20 grandmother's house and have dinner on the weekends. Marilyn  
21 Monroe, a/k/a, Nancy Cusumano, and the plaintiff, her  
22 daughter -- that's how Lee Strasberg gets into this particular  
23 case.

24 THE COURT: Well, in your amended complaint, at  
25 Page 4, you say, as the direct and proximate result of the

5611 0050

1 defendant's intentional acts in inflicting said emotional  
2 distress, and fraudulent conduct, the plaintiff did not  
3 discover said fraud until 1992, and suffered special and  
4 general damages, mental anguish, stress and anxiety, from  
5 1962.

6 MR. JONES: At the time of her mother's death  
7 plaintiff was living with her older sister, with Marilyn  
8 Monroe's older sister, okay? At that time, the plaintiff was  
9 a minor child. She was a minor at that time, in 1962.  
10 Lee Strasberg owed a duty to her, on the death of Marilyn  
11 Monroe, to come to her and tell her that, yes, she was, in  
12 fact, Marilyn Monroe's daughter; yes, in fact, that the estate  
13 had to provide maintenances and support for her, a minor  
14 child, at that time --

15 THE COURT: Yeah, but what sort of mental anguish and  
16 stress did she, in her ignorance, suffer?

17 MR. JONES: Failure to know that her mother was dead.

18 THE COURT: What?

19 MR. JONES: Failure to know -- in 1962, when her  
20 mother died --

21 THE COURT: Yeah, but she didn't know she was her  
22 mother at that time.

23 MR. JONES: That's correct, Your Honor.

24 THE COURT: But you are saying that, nevertheless,  
25 she suffered damages because she didn't know that her mother

SFAL 6057

1 was dead?

2 MR. JONES: That's correct, Your Honor. We are  
3 relating that back to the time she should have been told. We  
4 are saying, in 1962 --

5 THE COURT: Somehow she had great anxiety over  
6 something she didn't know about? Is that what you are saying?

7 MR. JONES: We are saying that she discovered this in  
8 1985, Your Honor. In 1985, 1986, the plaintiff discovers  
9 that, yes, she is Marilyn Monroe's daughter. And they tell  
10 her. So we are saying the mental anguish, the mental  
11 distress, occurred in 1985, when she found out about it.

12 THE COURT: Yeah, but you are saying from 1962 here  
13 in the complaint.

14 MR. JONES: Well, we are referring to that as the  
15 time of death of Marilyn Monroe when the defendant should have  
16 told her, and should have provided the maintenance and support  
17 for her.

18 THE COURT: But if she didn't know about it, how  
19 could she have been suffering anxiety over it?

20 MR. JONES: If she didn't have the money and support  
21 that she should have had, she does suffer some damages.

22 THE COURT: Well, I am addressing your claim for  
23 mental anguish, stress and anxiety.

24 MR. JONES: Yes, Your Honor.

25 THE COURT: I mean, on one hand you are saying she

SFAL 0052

1 didn't know about it, and on the other hand you are saying she  
2 suffered because of that fact.

3 MR. JONES: Well, basically, what we are arguing is  
4 as of -- in 1985, the mental anguish was placed on the  
5 plaintiff when she knew about it. We are saying the lack of  
6 support and maintenance should have been provided for her in  
7 1962, when her mother died --

8 THE COURT: So you wish to amend your amended  
9 complaint in that respect?

10 MR. JONES: Yes, Your Honor, we are.

11 As of 1962 they should have told her that, yes, you  
12 are Marilyn Monroe's daughter; yes, we know you are Marilyn  
13 Monroe's daughter; we should provide maintenance and support  
14 for you, a minor -- a minor child. And they don't do it.

15 They conceal this from her, and they go on and take  
16 the estate for themselves. They defrauded the plaintiff first  
17 in 1962, again in 1985, while she was a resident of the City  
18 and County of Honolulu. While she is here she finds out that  
19 she is Marilyn Monroe's daughter -- in 1986, okay.

20 (Discussion off the record between Mr. Jones  
21 and Ms. Miracle.)

22 MR. JONES: In 1986 she finds out she is Marilyn  
23 Monroe's daughter. At that time she makes a demand on the  
24 estate, through the Strasbergs, to turn over the money to her.  
25 They tell her, No, you are not Marilyn Monroe's daughter: We

SFA1 0053



1 are not going to turn over any of the estate to you. She has  
2 a certified letter that she sends to them to demand her part  
3 of the estate. At that time they continue the concealment.

4  
5 THE COURT: What does her adopted mother, or aunt say  
6 about all this?

7 MR. JONES: They say -- in 1986 they tell her -- her  
8 grandmother tells her, for the first time --

9 MS. MIRACLE: 1985.

10 MR. JONES: 1985, her grandmother tells her, for the  
11 first time, that, Yes, you are Marilyn Monroe's daughter.

12 THE COURT: What does her aunt say about this? Her  
13 aunt-adopted mother? What does she say?

14 (Discussion off the record between Mr. Jones  
15 and Ms. Miracle.)

16 THE COURT: I.e., Marilyn Monroe's sister.

17 (Discussion off the record between Mr. Jones  
18 and Ms. Miracle.)

19 MR. JONES: The plaintiff is saying that after her  
20 grandmother told her, that was the time when they told her  
21 about the thumb prints -- that's when they --

22 (Discussion off the record between Mr. Jones  
23 and Ms. Miracle.)

24 MR. JONES: She was told, in 1986, Your Honor --

25 MS. MIRACLE: 1985.

MR. JONES: -- 1985, by Marilyn Monroe's older

SFAI 0054

1 sister --

2 MS. MIRACLE: Huh-uh.

3 THE COURT: "Mother."

4 MS. MIRACLE: No. No -- yes, "mother."

5 MR. JONES: Your mother?

6 MS. MIRACLE: My grandmother.

7 MR. JONES: Your grandmother? Her grandmother told  
8 her -- that you were Marilyn Monroe's daughter --

9 MS. MIRACLE: Someone else told me. My grandmother  
10 confirmed it. I was reminded, okay? It was brought back to  
11 me. I had the recollection, but way back in my mind, because  
12 it was repressed, and I wasn't to know. And I knew that there  
13 were problems in the home at her death, and I knew that  
14 Marilyn Monroe died; but, because of the circumstances -- she  
15 was such a big star -- I was not told.

16 THE COURT: Well, we had better let your counsel make  
17 the argument.

18 MR. JONES: Your Honor, let me move on to the issue  
19 of, does this court have jurisdiction in the State of Hawaii?  
20 We are contending that, as of 1985, that when the plaintiff  
21 found out, she made a demand on the defendants. The  
22 defendants, at that point, continued the fraud, and what we  
23 are arguing is not only as a civil fraud, we are arguing that  
24 this is, in effect, a criminal fraud on the plaintiff while  
25 she was in the State of Hawaii.

SFAI 0055

1           They failed to tell her who she was. They failed to  
2       disclose to her that she had a cause of action against them.  
3       In 1985, in the State of Hawaii, they were on the telephone,  
4       they say to her, No, you are not Marilyn Monroe's daughter,  
5       and, No, you do not have a cause of action against us. The  
6       cause of action against them was for failure to pay  
7       maintenance and support when Marilyn Monroe died, the failure  
8       to pay over the estate. They are doing this in the State of  
9       Hawaii. This is what we contend --

10           THE COURT: When did she move to Hawaii?

11           MR. JONES: 198- --

12           MS. MIRACLE: '86. December of '86.

13           THE COURT: Pardon me?

14           MS. MIRACLE: December of '86.

15           MR. JONES: So we are contending that the defendants,  
16       while she was --

17           THE COURT: But she found out in 1985, a year  
18       earlier --

19           MS. MIRACLE: In February.

20           THE COURT: February of '85, that she was Marilyn  
21       Monroe's daughter, and at that time spoke to Strasberg, and  
22       Strasberg denied it.

23           MS. MIRACLE: No. No.

24           (Discussion off the record between Mr. Jones  
25       and Ms. Miracle.)

SCA 1 0056

1 MS. MIRACLE: Okay, the day I was reminded, I was on  
2 Virginia Beach with John Bellelo --

3 MR. JONES: Okay.

4 MS. MIRACLE: -- and he told me that I was Marilyn  
5 Monroe's daughter. And it made sense. Everything made sense  
6 that had happened prior to that.

7 MR. JONES: 1986 where were you?

8 MS. MIRACLE: In Hawaii. That's later.

9 MR. JONES: Okay, stop. Stop.

10 In 1986, she moved to Hawaii, okay.

11 MS. MIRACLE: That's right.

12 MR. JONES: At that point in time we are contending  
13 that the defendants, upon the demands that she made, continued  
14 to defraud her for the next six years, Your Honor. From 1986  
15 to 19-- --

16 THE COURT: But when did she first speak to  
17 Lee Strasberg about whether or not she was --

18 MR. JONES: One year prior.

19 THE COURT: That was 1986.

20 MS. MIRACLE: No. Lee Strasberg, I think, died in  
21 1984.

22 (Discussion off the record between Mr. Jones  
23 and Ms. Miracle.)

24 MS. MIRACLE: When I went to the surrogate's court  
25 originally, in 1985 --

5641 0057

1 MR. JONES: No --

2 MS. MIRACLE: -- to pursue the estate --

3 MR. JONES: No, no -- stay on 1986.

4 MS. MIRACLE: Okay.

5 1986, I never spoke to Lee Strasberg except when he  
6 was my acting instructor, okay, when I was a child.

7 MR. JONES: What demand did you make on the estate in  
8 1986? You sent the letter --

9 MS. MIRACLE: To the judge's chambers in New York --  
10 but I wasn't even aware then of this second will, of this  
11 will, that it was the Strasbergs --

12 MR. JONES: Okay, stop --

13 MS. MIRACLE: -- that had the money.

14 MR. JONES: Okay.

15 Your Honor, we are contending that the concealment of  
16 the cause of action, itself, the statute provides that this  
17 court has jurisdiction where they concealed from her -- they  
18 had -- as she was a minor, they had an affirmative duty to  
19 come forward and tell her, as a minor child, that she was the  
20 daughter of Marilyn Monroe, and that they had an obligation to  
21 provide maintenance and support for her. They don't do this.

22 In the State of Hawaii, from 1986 until the  
23 present -- that's six years -- during those six years they  
24 tell her she has no cause of action in the courts, against the  
25 estate, to recover the estate. This is done in Hawaii.

SCA1 0058

1 THE COURT: But the first contact with Anna Strasberg  
2 was in New York; is that right?

3 MR. JONES: Yes, that's correct.

4 MS. MIRACLE: I was --

5 MR. JONES: Stop talking.

6 Yes, that's correct.

7 THE COURT: And that was in '86? Or '85?

8 MR. JONES: What year? Just answer the year.

9 MS. MIRACLE: '89.

10 (Discussion off the record between Mr. Jones  
11 and Ms. Miracle.)

12 MR. JONES: Your Honor, the defendants are arguing  
13 the Statute of Limitations. What they are contending --

14 THE COURT: Well, I don't want to get into that now.  
15 I'm just asking you, was the first demand on Anna Strasberg --

16 MR. JONES: Was 1989.

17 THE COURT: '89?

18 MR. JONES: That's what she just said.

19 THE COURT: What happened for four years?

20 MS. MIRACLE: I had --

21 MR. JONES: Go ahead.

22 MS. MIRACLE: Okay.

23 Should I stand?

24 MR. JONES: No, just go ahead.

25 MS. MIRACLE: Okay.

SFA1 0059

1 MR. JONES: Real short.

2 MS. MIRACLE: Okay.

3 I didn't see this copy of the will -- I was given one  
4 copy of the will originally in 1985, at the surrogate's court.  
5 When I went to see Mr. Knox, on a trip to New York, after my  
6 aunt-mom's death, Jenny Maniscalco's death, to see my  
7 grandmother, I went to the surrogate's court again to show  
8 Mr. Knox the photograph of myself with Lee Strasberg.

9 MR. JONES: You are rambling. Just get to the issue:  
10 1989.

11 MS. MIRACLE: And Mr. Knox then gave me, while I was  
12 holding on to the photograph -- I never even showed him -- he  
13 brought out another copy of the will which I had never seen,  
14 which said that it was given to Lee Strasberg to be  
15 distributed to those to whom I am devoted.

16 Then I saw --

17 THE COURT: Excuse me.

18 Don't we have answers to interrogatories here that go  
19 into all of this?

20 MR. JONES: Yes, we do, Your Honor.

21 The plaintiff sued one of the magazines, the Globe  
22 Magazine, in federal court here, earlier this year, for  
23 defamation. And when they found out -- when the news media  
24 found out who she was -- when, basically, she did, a year  
25 ago -- she was placed on all the television talk shows, etc.,

Sf11 0060

1 etc., but one of the magazines defamed her, and said she  
2 was -- different things about her.

3 So the plaintiff sued Globe Magazine here, in this  
4 courtroom, about a year and a half ago, and she recovered  
5 damages for them claiming not only was she Marilyn Monroe's  
6 daughter -- they claimed that, they admitted that, that she  
7 was -- but they said bad things about her after that.

8 MS. MIRACLE: Lies.

9 MR. JONES: So the same Cades Schutte represented  
10 Globe Magazine in this court earlier this year, when they --  
11 (incomprehensible) -- and settled. That's where the  
12 depositions came from. Those depositions were not from this  
13 particular matter, but from the libel and slander of the  
14 Globe Magazine.

15 And what the defendants did was, they went and took  
16 the depositions from that earlier case, and then they gave  
17 those to the court. But those are the depositions not from us  
18 at this present time.

19 (Discussion off the record between Mr. Jones  
20 and Ms. Miracle.)

21 THE COURT: Well, please proceed.

22 MR. JONES: Thank you, Your Honor.

23 So, Your Honor, we conclude that, because of the  
24 fraudulent concealment, the failure to tell her ahead of time  
25 who she was, when she was a minor; the higher fiduciary duty

SF41 0061



6  
1 of loyalty that the estate executors owed her, a minor; the  
2 failure of them -- when they breached that fiduciary duty,  
3 that was one of the -- the first breach of fiduciary duty.

4 So, in conclusion, what we are saying is that the  
5 long-arm statutes of the State of Hawaii provide jurisdiction  
6 for this court, because there are three torts that we have  
7 alleged that they have committed in the State of Hawaii:

8 The fraudulent concealment, the failure to advise her  
9 that she had a cause of action against her, and the failure to  
10 provide maintenance and support for her. So those three torts  
11 occurred from 1986 to 1992.

12 THE COURT: Wait.

13 The third one that you list, provide maintenance and  
14 support while she was a minor?

15 MR. JONES: Yeah. They didn't tell her that. They  
16 had an obligation, in 1962, to tell her, look, you are a  
17 minor, and we have to provide maintenance and support for her.  
18 In 1985 they still don't tell her that -- that they didn't do  
19 it back in 1962.

20 THE COURT: In 1985 she had moved to Hawaii.

21 MR. JONES: I'm sorry, Your Honor, 1986. I am  
22 referring to -- 1986 to 1992, the six-year period, '86 to '92,  
23 while she is a resident of the State of Hawaii. That's all I  
24 am referring to. I am only referring to the times when she  
25 was domiciled and a resident of the State of Hawaii.

SFA10062

1           So those are the three frauds that we contend that  
2           the defendants did. In addition to that, we claim that --  
3           jurisdiction under doing business in the State of Hawaii. So  
4           those are reasons for this court to take jurisdiction.

5           Your Honor, moving on to the issue of the Statute of  
6           Limitations, the defendants now admit that she is the daughter  
7           of Marilyn Monroe. They are coming into this court, for  
8           purposes of the Statute of Limitations, and they are saying,  
9           yes, the plaintiff knew -- found out about, in 1985, that she  
10          was Marilyn Monroe's daughter. So she should have brought the  
11          cause of action from 1985.

12          THE COURT: I don't think they are admitting that she  
13          is the daughter of Marilyn Monroe. They are saying for  
14          purposes of that argument, even if she was, she is barred by  
15          the Statute of Limitations.

16          MR. JONES: That's their argument, Your Honor.  
17          That's what we are contending -- what we state they are  
18          saying.

19          But, Your Honor, in their briefs they say nothing of  
20          the issue of estoppel. They say nothing of the equitable  
21          doctrine of estoppel.

22          Our case law that we submitted says that where a  
23          party knowingly defrauds somebody, knowingly fails to tell  
24          them of the cause of action against them, that that is fraud,  
25          and not only does it toll the Statute of Limitations -- so it

SFAI 0063

1 tolled the Statute of Limitations for six years. That's what  
2 we are agreeing on. The Statute of Limitations ran out one  
3 year ago. We are one year past the Statute of Limitations.  
4 In their documents that's what they argue, and that's what we  
5 are contending: One year past the Statute of Limitations,  
6 under California law.

7 What we are contending is that, as long as they are  
8 defrauding her, they are equitably estopped from arguing the  
9 issue of the Statute of Limitations.

10 We cite in our brief a case, on Page 8, under  
11 California law, where a party fraudulently conceals the  
12 existence of a cause of action against him, the statute is  
13 tolled -- the Statute of Limitations is tolled, and the guilty  
14 party is estopped to plead the limitations. It's cited as  
15 "Mills versus Mills."

16 THE COURT: I want to ask you, what's the  
17 significance of the second will?

18 MR. JONES: Your Honor, we have always contended that  
19 we were entitled to -- that this was basically a 12(b)(6)  
20 motion. This is basically a motion for summary judgment. We  
21 have all along contended that, under Rule 12 of the Federal  
22 Rules of Civil Procedure, it states where the issue involves a  
23 motion to dismiss, matters outside the pleading are permitted  
24 to and not excluded by the court. The motion shall be treated  
25 as one for summary judgment, and disposition of -- as provided

SFAI 0064

1 in Rule 56, and all parties shall be given reasonable  
2 opportunity to present all material.

3 The "all material" means we have asked them for two  
4 things: Give us all the wills that you've got, of Marilyn  
5 Monroe -- because there are more than one, okay. And, number  
6 two, we asked them -- we are asking this court to ask them  
7 only one question, Your Honor. We are asking you to have them  
8 tell this court what legal proceedings have transpired in  
9 California.

10 THE COURT: My question is, what's the significance  
11 of the second will?

12 MR. JONES: We are contending that the will was  
13 originally probated in California. All of those wills go to  
14 where Marilyn Monroe was domiciled at the time of her death.  
15 She was living in California at the time of her death, in  
16 1962. She owned a home there. She had resided there. She  
17 was working there.

18 The wills, we are contending -- our contention is  
19 that those wills pertain to California law. We contend that  
20 the defendants went into California probate court first, and  
21 that's where they took the wills. We are asking this court to  
22 ask the defendants to disclose to this court what occurred in  
23 the probate court in California, and what legal proceedings  
24 transpired, since 1962, in California. Those are the only two  
25 questions we have asked for.

SEAI 0065

1           Going on, on the Statute of Limitations, we are  
2           contending that the defendants are estopped because of  
3           fraudulent concealment, and outright fraud.

4           Your Honor, the fraud that we are referring to here  
5           is -- and what we are asking of this court --

6           THE COURT: Getting back to the two wills, is it your  
7           position that both wills were executed after her birth? Do  
8           you acknowledge that?

9           MR. JONES: No, Your Honor, we are not prepared to do  
10          that at this time. Not without physically looking at the  
11          wills. They have access to the wills, and --

12          THE COURT: Well, but the will that was probated in  
13          New York, was --

14          MR. JONES: Probated after the --

15          THE COURT: -- and it was executed after her birth.

16          MR. JONES: That's correct, Your Honor.

17          THE COURT: Okay.

18          MR. JONES: Going on, as to the issue of estoppel, we  
19          have argued that the defendants are estopped to argue the  
20          Statute of Limitations under the equitable doctrine, because  
21          of their fraud.

22          Moving on to the pretermitted heir statute, the  
23          plaintiffs contend that because of the facts of Marilyn  
24          Monroe, insofar as she owned a home in California, she lived  
25          there, she was working there, that under a case that we cite,

5641 0066

1 which is the "Robertson versus Robertson" case, where the  
2 court held that the children of a testator brought suit  
3 claiming they were entitled to force heirship rights, and even  
4 though the will was probated in one state, the court allowed  
5 them to proceed under another state's jurisdiction, to gain  
6 greater rights under the estate.

7 So we are contending that, for all the reasons given,  
8 the plaintiff can proceed under California law, under the  
9 California pretermitted heir statute, which statute provides  
10 that whether or not she was born before or after execution of  
11 the will, that she is entitled to 50 percent of the estate.

12 Section 90 of the California Probate Code provides,  
13 whether born before or after the making of the will, or born  
14 before or after the death of testator -- and the cases that we  
15 cite provide for cases where whether the plaintiff, or the  
16 claimant, is born before or after the will makes no  
17 difference.

18 (Discussion off the record between Mr. Jones  
19 and Ms. Miracle.)

20 MR. JONES: Under the issue of the conflict of laws  
21 problem, with respect to the torts, the fraud issue and the  
22 intentional infliction of emotional distress, those occurred  
23 in Hawaii, and we are asking this court to apply Hawaii law to  
24 them, because they occurred here for the six-year period 1986  
25 to 1992.

SFAZ 0067

1 As to the issue of the pretermitted heir part, we are  
2 asking the court to enforce California law with respect to  
3 that issue.

4 Your Honor, the birth certificate of the plaintiff,  
5 from Wilcox General Hospital, Wykoff Heights Hospital, has on  
6 it, under our Exhibit A, it has on it what we contend are the  
7 footprints of the plaintiff. It also has two thumb prints.  
8 And the plaintiff's affidavit states that those are -- and our  
9 allegation is that those are the thumb prints of Marilyn  
10 Monroe. We are asking this court, basically, to treat this as  
11 a paternity action.

12 Our Exhibit A, of the birth certificate, and the  
13 document right behind it, which is also part of that birth  
14 certificate, we have provided for this court the footprints of  
15 the plaintiff, and we have asked this court for leave to amend  
16 to show that those, in fact, are the two right and left thumb  
17 prints of Marilyn Monroe. We are asking this court to allow  
18 us to do DNA genetic testing upon the body of Marilyn  
19 Monroe -- the body is not in the ground, the body is in a  
20 mausoleum, in California.

21 We are requesting that three physicians be appointed  
22 by the court, and that those three physicians be allowed to  
23 take Marilyn Monroe's fingerprints and DNA from her at this  
24 time, now.

25 We are asking this court to allow those three DNA

56A1 0068

1 genetic specialists to compare the DNA -- just as they do with  
2 Vietnam veterans who have been dead -- and Korean War  
3 veterans --

4 THE COURT: Well, what we are hearing this morning,  
5 Mr. Jones, is the motion to dismiss.

6 MR. JONES: Yes, I understand that, Your Honor, but  
7 it goes to the issue of whether or not these documents are  
8 true and correct.

9 We believe these documents are true and correct, and  
10 that's the only way that we can show and prove to this court,  
11 beyond a reasonable doubt, beyond any doubt, that she is, in  
12 fact, the daughter of Marilyn Monroe.

13 Your Honor, going back now, as to the fact that the  
14 defendants claim that the plaintiffs have not stated a cause  
15 of action, we feel that we have stated a cause of action,  
16 under California law, and we detailed that out on Page 5 as to  
17 the restatement -- I mean as to the section of the probate  
18 code, the 90. We also provide the court with a case called,  
19 "In re: Torregano's Estate," where the court holds that the  
20 pretermitted heir statutes -- it interprets the pretermitted  
21 heir statutes.

22 So, Your Honor, we have talked about jurisdiction,  
23 and feel that this -- in conclusion, Your Honor, we have said  
24 that we feel that this court can take jurisdiction of this  
25 case because the acts complained of occurred in the State of

56A1 0069



1 Hawaii. Some of the acts occurred, where we contend, in the  
2 State of California. We feel that this court has jurisdiction  
3 to proceed.

4 As to the issue of the tolling of the Statute of  
5 Limitations, and the estoppel, we have argued that the fraud  
6 and intentional concealment, for 25 years, the defendants have  
7 defrauded the plaintiff, and basically taken, basically stolen  
8 what we believe to be an estate valued in excess of \$100  
9 million -- those are our figures -- of which the plaintiff has  
10 gotten nothing.

11 We can prove, Your Honor, that she is Marilyn  
12 Monroe's daughter. With DNA testing we can prove it. What we  
13 are asking this court to do is give us our chance, to give the  
14 plaintiff a chance to prove it beyond any doubt. This is a  
15 one-time thing. Once DNA genetic testing is done, nobody else  
16 in the world can come up and claim to be Marilyn Monroe's  
17 offspring, because all they have to do --

18 THE COURT: Okay, I am going to ask Mr. Yasunaga if  
19 he has any rebuttal at this point, because we are running  
20 short on time.

21 MR. YASUNAGA: Thank you, Your Honor.

22 A few things. First, we raise the defense that he  
23 has failed to plead fraud with particularity. He doesn't  
24 plead any facts which would indicate that defendants knew that  
25 Ms. Greene was the daughter of Marilyn Monroe. He says that

5FAL 0070

1 defendant's deceased husband saw plaintiff with Marilyn  
2 Monroe, but that's not the same as saying that they knew she  
3 was the daughter.

4 On the Statute of Limitations argument, I think  
5 what's been said by plaintiff and her counsel have confirmed  
6 that all the possible claims are time-barred. She said here  
7 today that she knew since 1985, or at least believed since  
8 1985, that she was the daughter of Marilyn Monroe, and it made  
9 a lot of sense because of indications she had earlier,  
10 indicating she may have had notice even before that.

11 Her counsel says that the Statute of Limitations was  
12 tolled by fraud, but the tolling for fraud and estoppel only  
13 lasts until she knows of her claims. She's admitted she has  
14 known of her claims since 1985. I think the materials we  
15 attached show that from January 1985 she started going to the  
16 surrogate's court to do research, and talking to lawyers, and  
17 saying she was going to try to get part of the estate. So  
18 although estoppel may be a defense in some instances, it's not  
19 a defense here because she knew the facts upon which she could  
20 bring her claims from January '85, and her failure to file a  
21 lawsuit at that time is not the fault of defendants. There  
22 was no ongoing fraud, so her claims are barred by the Statute  
23 of Limitations.

24 As for the jurisdictional issue, I believe that  
25 personal jurisdiction does not exist. Mr. Jones has not

SFA10071

1 talked about the argument about the causes of action do not  
2 arise out of the business contact. I take it he concedes that  
3 we've included authorities showing that it cannot be argued to  
4 arise out of those contacts, because the business activity  
5 didn't cause any of these claims.

6 He now argues that there were certain torts that were  
7 committed here in Hawaii.

8 The fraudulent concealment -- first of all, the  
9 maintenance, there was no duty to provide maintenance after  
10 she became an adult, which was way back in the sixties. And  
11 then that leaves us with the fraudulent concealment and  
12 failure to advise that she had a claim. But she didn't move  
13 to Hawaii until '86, and she already knew of her claim in '85,  
14 so there was no ongoing tort here in Hawaii.

15 Also, I believe that, if there was a tort, it was  
16 committed long before she ever got to Hawaii, and the fact  
17 that a possible plaintiff moves here and there doesn't make  
18 that tort follow her all over the place, giving jurisdiction  
19 every place she may choose to travel.

20 That's all I have, Your Honor, unless you have any  
21 specific questions.

22 THE COURT: Well, the court's ready to rule.

23 The court will dismiss the claim of plaintiff for  
24 lack of personal jurisdiction. The court feels that this  
25 claim should be brought in New York. Anna Strasberg is

SFA1 0072

1 administratrix of Monroe. Marilyn Monroe's estate is not  
2 registered to do business in Hawaii, has no offices in Hawaii,  
3 and has not executed a contract in Hawaii.

4           Entering into a license agreement for the sale of  
5 products bearing the likeness of Marilyn Monroe is  
6 insufficient to establish general jurisdiction over Anna  
7 Strasberg.

8           To exercise general jurisdiction, courts require more  
9 than selling a product in the forum state, citing to "Schute  
10 versus Carnival Cruise Lines." Therefore, under Ninth Circuit  
11 authority, the exercise of general jurisdiction would be  
12 improper.

13           In addition, Hawaii does not have specific  
14 jurisdiction over Anna Strasberg. Specific jurisdiction  
15 requires that the cause of action relate to the defendant's  
16 contacts in Hawaii.

17           Here plaintiff's main cause of action is her claim to  
18 a fractional share of decedent's estate as a pretermitted  
19 heir.

20           Plaintiff's claim to the estate does not arise out of  
21 the sales of Marilyn Monroe products in Hawaii. The plaintiff  
22 does not demonstrate any connection between the cause of  
23 action and defendant's business activities in Hawaii.

24           In addition, even if Anna Strasberg did commit fraud  
25 and breach of fiduciary duties as administratrix and executrix

5F910073

1 of the estate, there is nothing to show that this wrongful  
2 conduct occurred in Hawaii; thus, the jurisdictional  
3 allegations are insufficient, and plaintiff's complaint must  
4 be dismissed.

5 In the alternative, the court further finds that  
6 plaintiff has failed to state a cause of action under  
7 pretermitted heir claim.

8 The court finds that New York law governs this case.  
9 New York is the place where the relationship between the  
10 parties is centered. Plaintiff's cause of action arose  
11 because of her alleged birth to the decedent in New York, and  
12 the decedent's subsequent death while domiciled in New York,  
13 with the will executed in New York, had failed to provide for  
14 plaintiff.

15 The will was submitted to probate in New York, and  
16 the estate was administered in New York under the supervision  
17 of courts of that state.

18 Anna Strasberg is a domicile of New York, and her  
19 authority as administratrix derives from the New York courts.  
20 Under New York law, plaintiff has failed to state a claim.

21 New York pretermmission statute that was in effect at  
22 the time of the decedent's death did not allow actions to be  
23 brought by children who were born prior to the execution of  
24 the will.

25 The court will prepare the order.

SFA1 0074

1 We will take a short recess before the next matter.

2 THE BAILIFF: All rise.

3 Court stands in recess.

4 (The proceedings in the above-entitled  
5 matter were concluded at 11:19 a.m.)

6 -oo0oo-

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SFA1 0075

-ooOoo-

I, Stephen B. Platt, Official Court Reporter,  
United States District Court, District of Hawaii, do hereby  
certify that the foregoing is a true and correct transcript of  
proceedings in Civil Number 92-00605ACK, Nancy Miracle versus  
Anna Strasberg, etc., at Honolulu, Hawaii, on Monday,  
December 14, 1992, before the Honorable Alan C. Kay, Chief  
United States District Judge.

FRIDAY, JANUARY 15, 1993

  
STEPHEN B. PLATT, CSR NO. 248

SFA1 0076